

**IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

MARK L. BROWN,)
)
Plaintiff,)
)
v.)
)
BANGALORE LAKHSMAN,)
)
d/b/a: BTL FOUNDATION)
INTERNATIONAL SERVICES,)
)
Defendant.)

C.A. No. CPU4-09-006133

Submitted: January 26, 2010
Decided: February 23, 2010

MEMORANDUM OPINION AND ORDER

Mark L. Brown, 1104 Surry Ct., New Castle, Delaware 19720. *Pro Se* Plaintiff.

Leo J. Ramunno, Esquire, 2961 Centerville Rd., Suite 302, Wilmington, Delaware 19808. Attorney for Defendant.

ROCANELLI, J.

Plaintiff Mark L. Brown brought suit in the Court of Common Pleas against Defendant Bangalore Lakhsman d/b/a BTL Foundation International Services alleging that Defendant committed fraud, engaged in deceptive trade practices and breached a contractual agreement. The Court conducted a trial on January 26, 2010.

Lakhsman failed to appear for trial. Lakhsman's attorney, Leo J. Ramunno, Esquire, appeared. Ramunno conceded that Lakhsman had actual notice of the trial but he was in India. Neither Lakhsman nor Ramunno informed the Court that he would not be present for trial on January 26, 2010 and a continuance was not requested. Brown had requested the appearance of Lakhsman to testify at trial. Therefore, as a result of Lakhsman's failure to appear, a default judgment was entered in favor of Brown and against Lakhsman.¹

The Court considered whether it had subject matter jurisdiction for Brown's claims against Lakhsman. The Court ruled that it had subject matter jurisdiction.

Trial was limited to consideration of damages. The Court reserved decision. This is the Court's decision on damages.

¹ A representative of BTL Foundation for International Services was present in Court for trial on January 26, 2010. Ramunno stated the representative was present as a fact witness. Ramunno indicated that he did not represent BTL Foundation.

FACTS AND PROCEDURAL HISTORY

Brown entered into a contract with Lakhsman to rent a property located at 801 W. Newport Pike sometime during the year 2000. Lakhsman represented to Brown that the property could be used for business or residential purposes. Brown agreed to pay \$550.00 per month for use of the space.

Brown paid rent and used the property for both residential and business purposes until he moved out in August 2008. Brown operated a magazine business and stored valuable electronic and computer equipment for his business at the property. The equipment included public address equipment valued at \$20,000; video editing equipment valued at \$20,000; and computer equipment valued at \$10,000.

In October 2007, Brown was informed by New Castle County that the space he was renting from Lakhsman had not been approved by the Board of Adjustments for either business or residential use. According to New Castle County, Brown's use of the property was in violation of New Castle County Code of Ordinances. Brown continued to use the property and pay rent until August 2008. In August 2008, Lakhsman told Brown that he must move out of the property or face a fine of \$100.00 per day for occupying the property in violation of County Code.

Brown left the property in August 2008 and became homeless. Because he had to move out so quickly, Brown was forced to move his business equipment into storage at Churchman's Mini Storage. This left Brown unable to continue operation of his business. Brown stayed wherever he could find a place to sleep. After about a year, Brown found a permanent residence in Wilmington, Delaware.

Brown filed this action against Lakhsman alleging fraud, deceptive trade practices and breach of contract. Brown is seeking \$39,600.00, the amount he paid in rent for six (6) years. Brown contends such a damages award is appropriate because Lakhsman fraudulently represented to Brown that he could use the property for residential or business use. Brown also claims damages should be awarded for moving and storage expenses, mental anguish and humiliation.

ANALYSIS

“[T]he damages which are recoverable for breaches of duties by contract are those injurious consequences which ‘might have been foreseen or anticipated’ as being likely to follow from the negligent act or breach, these consequences to be considered to be the natural and probable consequences [sic].”² In *McClain v. Faraone*, the plaintiff lost a residential property at foreclosure as a result of the negligence of the defendant, who was the plaintiff's counsel in a residential property closing. Damages were awarded to the plaintiff for settlement expenses,

² *McClain v. Faraone*, 369 A.2d 1090, 1092 (Del. Super. 1977) (citing *Clemens v. Western Union Telegraph Co.*, 28 A.2d 889 (Del. Super. 1942)).

moving expenses, storage expenses and the cost of improvements made to the foreclosed property. The Court rejected the plaintiff's request for damages for claimed loss of reputation, embarrassment and emotional distress because the breach of duty did not involve willful or wanton conduct of the defendant. "The general rule is that in an action based upon contract, unaccompanied by a related affirmative tortuous physical act and unaccompanied by physical injury, mental suffering is not an element to be considered in awarding compensatory damages."³ The Court found that the plaintiff was not entitled to attorney fees or punitive damages because the plaintiff had not established ill will, malice or intention by the defendant to cause injury to the plaintiff.⁴

Brown claims that he should be awarded compensatory, punitive and statutory damages in the amount of \$39,600.00, on the grounds that Lakhsman never had the legal authority to lease the property and Brown was never lawfully able to rent or occupy the property. Brown also argues that damages should be awarded for his humiliation and mental anguish. Lakhsman counters that Brown had full use and enjoyment of the property, and therefore only nominal damages should be awarded.

³ *Id.* 369 A.2d at 1094.

⁴ *Id.* 369 A.2d at 1095.

This Court entered a default judgment in favor of Brown who must prove the claimed damages, which may not be speculative or conjectural.⁵ Brown has not shown any tortuous physical act or physical injury. Therefore, Brown is not entitled to recover for mental anguish. Similarly, Brown has not shown any element of ill will, malice or intention to cause injury. Consequently, punitive damages will not be awarded.

The objective of compensatory damages is to place the injured party in as good a position as existed before the injury.⁶ “Difficulty of measurement, however, will not frustrate a damage award.”⁷ “This Court has ‘discretion to employ a flexible approach to damages in order to achieve a just and reasonable result.’”⁸

Brown is entitled to reasonable expenses incurred for a reasonable period after being forced to leave the property. However, Brown had a duty to mitigate damages. Brown’s damages included the cost of moving and loss of ability to continue operation of his business. Although Brown has suffered harm, he has not offered a realistic estimate of damages.

⁵ *Ausejo v. Delmarva Power and Light Co.*, 1999 WL 1847437 (Del. Com. Pl.) (citing *Henne v. Balick*, 146 A.2d 394, 396 (Del. 1958)).

⁶ *Id.*

⁷ *Id.* (citing *Henne v. Balick*, 146 A.2d 394, 396 (Del. 1958)).

⁸ *Id.* (quoting *Council of Unit Owners v. Freeman Assoc.*, 564 A.2d 357, 363 (Del. Super. 1989)).

The Court finds that damages should be awarded in the amount of \$1,650.00, representing three months' rent, which is sufficient to remedy the harm suffered by Brown, who was left without a place to live or to operate his business. Brown should have been able to locate a comparable rental within three months' time. Lakhsman is responsible for the price of a comparable rental because it is his conduct that left Brown without housing or a location to operate his business.

CONCLUSION

The Court had subject matter jurisdiction in this matter. Default judgment was entered in favor of Plaintiff due to Defendant's failure to appear. Damages are awarded to Plaintiff in the amount of \$1,650.00.

IT IS SO ORDERED.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli